



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Employment Security Department

☐ Permanent Rule
☒ Emergency Rule

Effective date of rule:

Permanent Rules

- ☐ 31 days after filing.
☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- ☒ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: On June 19, 2008, the Supreme Court of Washington overturned the Court of Appeals, holding that the list of good cause reasons for voluntarily leaving work in RCW 50.20.050(2)(b) is not exclusive. Instead, the department has the authority to consider whether other reasons constitute good cause for leaving work under RCW 50.20.050(2)(a) for the purpose of eligibility for unemployment benefits. The emergency rule is intended to implement the Court's decision.

Citation of existing rules affected by this order:

Repealed: WAC 192-16-009

Amended: _____

Suspended: WAC 192-16-009

Statutory authority for adoption: RCW 50.12.010, RCW 50.12.040, RCW 50.20.010

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR _____ on _____ (date).

Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The Court's ruling was effective immediately. The department's existing regulations were adopted with the understanding that the 11 reasons for quitting work enumerated in RCW 50.20.050(2)(b) was an exclusive list. An emergency rule is needed to implement the Court's decision that other factors may constitute good cause for voluntarily leaving work while permanent rules are developed in conjunction with stakeholders.

Date adopted:

7-11-08

NAME (TYPE OR PRINT)

Karen T. Lee

SIGNATURE

TITLE

Commissioner

CODE REVISER USE ONLY

2-35
08-15-051

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

New Section

WAC 192-150-170 Meaning of Good Cause—RCW 50.20.050(2). (1) **General.** RCW 50.20.050(2) provides that you will not be disqualified from receiving unemployment benefits when you voluntarily leave work for good cause. The Washington Supreme Court in *Spain v. Employment Security Department* held that the factors listed in RCW 50.20.050(2)(b) are not the only circumstances in which an individual has good cause for voluntarily leaving work. While these are considered *per se* or stand alone good cause reasons, the court held that the department is required under RCW 50.20.050(2)(a) to consider whether other circumstances constitute good cause for voluntarily leaving work.

(a) **Stand alone good cause factors--RCW 50.20.050(2)(b).** The following circumstances are sufficient alone to establish good cause for voluntarily leaving work. They are:

- (i) Accepting a bona fide offer of work (see WAC 192-150-050);
- (ii) Due to your illness or disability or the death, illness, or disability of a member of your immediate family (see WAC 192-150-055 and WAC 192-150-060);
- (iii) Moving to accompany your transferred military spouse (see WAC 192-150-110);
- (iv) Protecting yourself or a member of your immediate family from domestic violence or stalking (see WAC 192-150-112 and WAC 192-150-113);
- (v) A reduction in your pay of twenty-five percent or more (see WAC 192-150-115);
- (vi) A reduction in your hours of twenty-five percent or more (see WAC 192-150-120);
- (vii) A change in your worksite resulting in increased distance or difficulty of travel (see WAC 192-150-125);
- (viii) Unsafe working conditions which your employer has failed to remedy (see WAC 192-150-130);
- (ix) Illegal activities at the worksite which your employer has failed to correct (see WAC 192-150-135);
- (x) Changes in your usual work that violate your sincere religious or moral beliefs (see WAC 192-150-140); and
- (xi) Entering an approved apprenticeship training program (see WAC 192-150-160).

(b) **Other factors constituting good cause—RCW 50.20.050(2)(a).** In addition to the factors above, the department may also determine that you had good cause to leave work voluntarily for reasons other than those listed in RCW 50.20.050(2)(b).

(i) For separations under subsections (ii) and (iv) below, all of the following conditions must be met to establish good cause for voluntarily leaving work:

- (A) You left work primarily for reasons connected with your employment; and
- (B) These work-connected reasons were of such a compelling nature they would have caused a reasonably prudent person to leave work; and
- (C) You first exhausted all reasonable alternatives before you quit work, unless you are able to show that pursuing reasonable alternatives would have been futile.

(ii) **Substantial involuntary deterioration of the work.** As determined by the legislature, RCW 50.20.050(2)(b), subsections (v) through (x), represent changes to employment that constitute a substantial involuntary deterioration of the work.

(iii) **Other changes in working conditions.** Changes to your working conditions other than those included in RCW 50.20.050(2)(b)(v)-(x) will be evaluated under WAC 192-150-150 to determine if they constitute a refusal of an offer of new work.

(iv) **Unreasonable hardship.** Other work-connected circumstances may constitute good cause if you can show that continuing in your employment would work an unreasonable hardship on you. “Unreasonable hardship” means a result not due to your voluntary action that would

DRAFT

cause a reasonable person to leave that employment. The circumstances must be based on existing facts, not conjecture, and the reasons for leaving work must be significant.

Examples of work-connected unreasonable hardship circumstances that may constitute good cause include, but are not limited to, those where:

(A) Repeated behavior by your employer or co-workers creates an abusive working environment.

(B) You show that your health or physical condition or the requirements of the job have changed so that your health would be adversely affected by continuing in that employment.

(2) **Commissioner Approved Training.** After you have been approved by the department for Commissioner Approved Training, you may leave a temporary job you have taken during training breaks or terms, or outside scheduled training hours, or pending the start date of training, if you can show that continuing with the work will interfere with your approved training.

(3) **Redetermination.** Decisions issued by the department on or before the effective date of this rule that are denials for voluntarily leaving work without good cause and pending appeal at the Office of Administrative Hearings or pending review at the Commissioner's Review Office shall be returned to the department for redetermination under this rule.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-16-009 Disqualification for leaving work voluntarily--Meaning of good cause
for claims with an effective date prior to January 4, 2004--RCW
50.20.050(1).